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8 **BEFORE THE**
BOARD OF REGISTERED NURSING
9 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

10 In the Matter of the Statement of Issues
11 Against:

Case No. 2013-349

12 **DMITRIY ALEKSANDR KAMINSKIY**

STATEMENT OF ISSUES

13 Respondent.
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15 Complainant alleges:

16 **PARTIES**

17 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Statement of Issues solely in
18 her official capacity as the Executive Officer of the Board of Registered Nursing, Department of
19 Consumer Affairs.

20 2. On or about August 31, 2011, the Board of Registered Nursing, Department of
21 Consumer Affairs received an application for a Registered Nurse from Dmitriy Aleksandr
22 Kaminskiy (Respondent). On or about August 23, 2011, Dmitriy Aleksandr Kaminskiy certified
23 under penalty of perjury to the truthfulness of all statements, answers, and representations in the
24 application. The Board denied the application on December 13, 2011.

25 **JURISDICTION**

26 3. This Statement of Issues is brought before the Board of Registered Nursing (Board),
27 Department of Consumer Affairs under the authority of the following laws. All section
28 references are to the Business and Professions Code unless otherwise indicated.

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1 an order granting probation is made suspending the imposition of sentence, irrespective of a
2 subsequent order under the provisions of Section 1203.4 of the Penal Code.

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4 "(3) (A) Done any act that if done by a licentiate of the business or profession in question,
5 would be grounds for suspension or revocation of license.

6 9. California Code of Regulations, title 16, section 1444, states:

7 "A conviction or act shall be considered to be substantially related to the qualifications,
8 functions or duties of a registered nurse if to a substantial degree it evidences the present or
9 potential unfitness of a registered nurse to practice in a manner consistent with the public health,
10 safety, or welfare. Such convictions or acts shall include but not be limited to the following:

11 "(a) Assaultive or abusive conduct including, but not limited to, those violations listed in
12 subdivision (d) of Penal Code Section 11160.

13 10. Section 118, subdivision (b), of the Code provides that the
14 suspension/expiration/surrender/cancellation of a license shall not deprive the
15 Board/Registrar/Director of jurisdiction to proceed with a disciplinary action during the period
16 within which the license may be renewed, restored, reissued or reinstated.

17 11. Section 125.3 of the Code provides, in pertinent part, that the
18 Board/Registrar/Director may request the administrative law judge to direct a licentiate found to
19 have committed a violation or violations of the licensing act to pay a sum not to exceed the
20 reasonable costs of the investigation and enforcement of the case.

21 12. Section 490 of the Code states:

22 "(a) In addition to any other action that a board is permitted to take against a licensee, a
23 board may suspend or revoke a license on the ground that the licensee has been convicted of a
24 crime, if the crime is substantially related to the qualifications, functions, or duties of the business
25 or profession for which the license was issued.

26 "(b) Notwithstanding any other provision of law, a board may exercise any authority to
27 discipline a licensee for conviction of a crime that is independent of the authority granted under
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1 subdivision (a) only if the crime is substantially related to the qualifications, functions, or duties
2 of the business or profession for which the licensee's license was issued.

3 "(c) A conviction within the meaning of this section means a plea or verdict of guilty or a
4 conviction following a plea of nolo contendere. Any action that a board is permitted to take
5 following the establishment of a conviction may be taken when the time for appeal has elapsed, or
6 the judgment of conviction has been affirmed on appeal, or when an order granting probation is
7 made suspending the imposition of sentence, irrespective of a subsequent order under the
8 provisions of Section 1203.4 of the Penal Code.

9 "(d) The Legislature hereby finds and declares that the application of this section has been
10 made unclear by the holding in *Petropoulos v. Department of Real Estate* (2006) 142 Cal.App.4th
11 554, and that the holding in that case has placed a significant number of statutes and regulations
12 in question, resulting in potential harm to the consumers of California from licensees who have
13 been convicted of crimes. Therefore, the Legislature finds and declares that this section
14 establishes an independent basis for a board to impose discipline upon a licensee, and that the
15 amendments to this section made by Senate Bill 797 of the 2007 -08 Regular Session do not
16 constitute a change to, but rather are declaratory of, existing law."

17 13. Section 493 of the Code states:

18 "Notwithstanding any other provision of law, in a proceeding conducted by a board within
19 the department pursuant to law to deny an application for a license or to suspend or revoke a
20 license or otherwise take disciplinary action against a person who holds a license, upon the
21 ground that the applicant or the licensee has been convicted of a crime substantially related to the
22 qualifications, functions, and duties of the licensee in question, the record of conviction of the
23 crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact,
24 and the board may inquire into the circumstances surrounding the commission of the crime in
25 order to fix the degree of discipline or to determine if the conviction is substantially related to the
26 qualifications, functions, and duties of the licensee in question.

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1 **FIRST CAUSE FOR DENIAL OF APPLICATION**

2 **(UNPROFESSIONAL CONDUCT)**

3 14. Respondent's application is subject to denial under section 480(a)(1), 480(a)(3) and
4 2761(a) and 2761 (f) in that on or about April 18, 2006, in a criminal proceeding entitled *People*
5 *v. Dmitriy Aleksandr Kaminskiy* in Alameda Superior Court, Case Number 392773, Respondent
6 was convicted by plea of guilty for a violation of Penal Code Section 242 (Battery) a
7 misdemeanor. The circumstances are as follows:

8 a. On or about April 16, 2006 Respondent was in a verbal altercation with two
9 adults at his residence. Respondent is alleged to have thrown a computer mouse against the wall
10 and physically charged the victims. Respondent punched one of the victims.

11 b. Respondent was sentenced as follows: 3 years probation, 3 days in jail and a
12 fine.

13 **SECOND CAUSE FOR DENIAL OF APPLICATION**

14 **(UNPROFESSIONAL CONDUCT)**

15 15. Respondent's application is subject to denial under section 480(a)(1), 480(a)(3) and
16 2761(a) and 2761 (f) in that on or about August 8, 2011 in a criminal proceeding entitled *People*
17 *v. Dmitriy Aleksandr Kaminskiy* in Alameda Superior Court, Case Number 432059, Respondent
18 was convicted by plea of nolo contendere for a violation of Penal Code Section 415 (disturbing
19 the peace) a misdemeanor. The circumstances are as follows:

20 a. On or about October 4, 2010, Respondent was at the Anthony Chabot gun
21 range. Respondent was carrying a fire arm and observed to be speaking in a slurred, spacey and
22 slow manner as well as unsteady in his gait. Respondent was not complying with the rules of the
23 gun range and did not respond to the safety requests of the rangers. Respondent left the range and
24 sped out of the parking lot at a high speed. He was pulled over a few minutes later by police
25 officers who administered a field sobriety test which Respondent failed.


26 b. Respondent was sentenced as follows: 3 years probation, assessed a fine and
27 ordered to serve one day in jail.
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PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
and that following the hearing, the Board of Registered Nursing issue a decision:

1. Denying the application of Dmitriy Aleksandr Kaminskiy for a Registered Nurse License;
2. Taking such other and further action as deemed necessary and proper.

DATED: October 30, 2012


LOUISE R. BAILEY, M.ED., RN
Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California
Complainant

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statement of issues.rtf